

Serial No. 09/345,269

Reply to Office Action of September 22, 2003

REMARKS

Responsive to the Office Action mailed September 22, 2003, Applicant has studied the Examiner's comments and the cited art. Claims 1-21 are currently pending. In view of the following remarks, Applicant respectfully submits that the application is in condition for allowance.

Amendments

Applicant has amended claim 3 to clarify that the calling and answering gateways are T.38 gateways.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-3, 7, 11, 15-17 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tonnyby, U.S. Patent No. 6,515,996, in view of Qureshi, U.S. Patent No. 4,756,007. Applicant respectfully traverses the rejections.

With respect to claims 1, 7, 11, and 15, the Office Action admits that Tonnyby does not disclose

the calling modem including a timer, the timer being operable to store a network latency value, the calling modem being operable to compare the network latency value to a network latency threshold, to transmit a low speed modem connection signal if the network latency value is greater than the network latency threshold, and to transmit a high speed modem connection selection signal if the network latency value is less than the network latency threshold; and an answering modem coupled to the internet protocol network, the answering modem being operable to receive the low speed modem connection signal and the high speed modem connection signal.¹

The Office Action attempts to fill this gap with Qureshi, asserting that Qureshi discloses "to the calling modem including a timer the timer being operable to store the network latency value the calling modem being operable to compare the network latency value to a network latency threshold ..."² This mischaracterizes Qureshi, which fails to teach or suggest use of a timer for storing a network latency threshold, or a network latency threshold comparison. Instead of "transmit[ing] a low speed modem connection signal" if a network latency value is greater than a network latency threshold" and "transmit[ing] a high speed modem connection selection signal if the network latency value is less than the network latency threshold," Qureshi monitors "the quality of the channel over which signals are received" using a trellis discrepancy measurement.³ Qureshi recites the use of a rate decision logic (RDL) that calculates an "average trellis discrepancy" sample every 10ms,

¹ Paper 8, pp. 2-3.

² Paper 8, p. 3 (citations omitted).

³ Col. 6, lines 3-6.

Serial No. 09/345,269

Reply to Office Action of September 22, 2003

then accumulates ten samples not in a timer, but in an accumulator 82.⁴ Every 100ms, the accumulated samples are sent as a TDAVG signal and the accumulator reset to zero.⁵ The ARC 48 receives the TDAVG over line 52 every 100ms, feeding the TDAVG signal to the RDL.⁶ The RDL compares the TDAVG to a predetermined threshold value for the accumulated TDAVG and makes a fall back decision if the TDAVG value is "greater than a threshold value for a pre-chosen number of consecutive times," by incrementing a counter if the TDAVG exceeds the threshold value, then doing a fall back if the counter exceeds a counter threshold.⁷ The counter is reset if the TDAVG value is less than or equal to the threshold value.⁸ Thus even if the TDAVG value exceeds the predetermined threshold value, Qureshi does not automatically make a fall back decision, but only makes the fall back decision if the threshold is exceeded a certain number of times without an intervening below threshold TDAVG value. A similar technique is used for making fall forward decisions, using a minimum metric accumulated signal (MMAVG) instead of the TDAVG.⁹ The MMAVG measures the dispersion of the received signal points around an ideal signal point.¹⁰ Neither the MMAVG nor the TDAVG measure a network latency. Rather, these values measure two types of errors rates in the trellis modulation encoding according to the Viterbi algorithm, which the ARC 48 of Qureshi compares against an error threshold for making the fall back and fall forward decisions.

Therefore, even if Tonnby and Qureshi are combined, the justification for which Applicant does not admit, the combination fails to achieve Applicant's claimed subject matter.

Further, the Office Action's justification for combining Tonnby and Qureshi is that "both the transmitting modem and the receiving modem must process data at the same rate in order to communicate thus by measuring the threshold of the network on the receiving modem side to the sending modem side."¹¹ Applicant respectfully submits that neither Tonnby nor Qureshi teach or suggest "measuring the threshold of the network" as a way of insuring the transmitting and receiving modems process data at the same rate. Further, simply ensuring that two modems have only one possible transmit and receive rate would be sufficient to ensure they process data at the same rate. Thus, without taking Applicant's disclosure as a blueprint, the Office Action fails to provide a teaching or suggestion to combine Tonnby and Qureshi.

In addition, Tonnby, as admitted by the Office Action, fails to disclose comparing a network latency value to a network latency threshold. Qureshi, as shown above, also fails to suggest a timer for storing network latency values or comparing the stored network latency value with a network latency threshold. Qureshi recites the use of a trellis discrepancy threshold, but does not measure the threshold, instead comparing the TDAVG value with a "preset threshold value." Thus, neither Tonnby nor Qureshi provide even the flawed

⁴ Col. 6, lines 3-29.

⁵ Col. 6, lines 26-29.

⁶ Col. 6, lines 57-64.

⁷ Col. 6, lines 60-Col. 7, line 20.

⁸ Col. 6, line 68-Col. 7, line 2.

⁹ Col. 6, lines 30-59; Col. 7, lines 21-51.

¹⁰ Col. 7, lines 27-29.

¹¹ Paper 8, pp. 3-4.

Serial No. 09/345,269
Reply to Office Action of September 22, 2003

suggestion to combine asserted by the Office Action. The Federal Circuit has said that "for a claim to be 'obvious,' the prior art must teach or suggest the *specific* combination of elements to yield to the subject matter of the entire claim."¹² "Combining prior art references without evidence as such a suggestion, teaching, or motivation simply takes the inventors disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight."¹³

For at least these reasons, Applicant respectfully requests withdrawal of the rejections.

Claims 2-3, 16-17 and 20 depend from allowable claims 1 and 15 and are therefore also allowable. For at least this reason, Applicant respectfully requests withdrawal of the rejections.

Additionally, with respect to claim 2, the Office Action asserts that Tonnby discloses a "calling facsimile terminal coupled to the calling modem; and an answering facsimile terminal coupled to the answering modem (please note column 2, lines 52-62)."¹⁴ This mischaracterizes Tonnby. The cited passage recites a telephone 1 and a PC 2 both connected to PSTN-ISDN 3 via a modem 4. Tonnby fails to teach or suggest either a calling facsimile terminal or an answering facsimile terminal. For this additional reason, Applicant respectfully requests withdrawal of the rejections.

With respect to claim 3, the Office Action asserts that Tonnby discloses a calling gateway including the calling modem and an answering gateway including the answering modem.¹⁵ Applicant has amended claim 3 to clarify that the calling gateway and the answering gateway are T.38 gateways as recited in Applicant's specification.¹⁶ Tonnby fails to teach or suggest such a T.38 gateway. Qureshi and Yoshida also fail to teach or suggest a T.38 gateway. For these additional reasons, Applicant respectfully requests withdrawal of the rejections.

With respect to claims 17 and 20, the Office Action asserts that Qureshi discloses "providing a low speed modem selection signal if the network latency is greater than the network latency threshold to indicate to perform the establishing a low speed modem connection step."¹⁷ As shown above, Qureshi fails to teach or suggest use of a network latency value or a network latency threshold, instead computing a trellis discrepancy value and a minimum metric value, neither of which measure network latency. Therefore, Qureshi does not teach or suggest providing a low speed modem selection signal or a high speed modem selection signal based upon a comparison of the network latency with the network latency threshold. For these additional reasons, Applicant respectfully requests withdrawal of the rejections.

¹² *In re Dance*, 160 F.3d 1339, 1343 (Fed. Cir. 1998).

¹³ *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

¹⁴ Paper 8, p. 4.

¹⁵ Paper 8, p. 4.

¹⁶ Specification, p. 5, lines 1-11.

¹⁷ Paper 8, p. 4, (citations omitted).

Serial No. 09/345,269

Reply to Office Action of September 22, 2003

Claims 4-6, 8-10, 12-14, 18-19, and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tonnyby, U.S. Patent No. 6,515,996, in view of Qureshi, U.S. Patent No. 4,756,007, and further in view of Yoshida, U.S. Patent No. 6,437,870. Applicant respectfully traverses the rejections.

Claims 4-6, 8-10, 12-14, 18-19 and 21 depend from allowable claims 1, 7, 11, and 15 and are therefore also allowable. For at least this reason, Applicant respectfully requests withdrawal of the rejections.

Further, with respect to claims 5, 9, 13, and 18, the Office Action admits that "neither Tonnyby et al nor Qureshi et al nor Yoshida et al disclose or teach The [sic] communications system of claim 1, wherein the low speed modem connection comprises a Group 3 connection ...".¹⁸ For these additional reasons, Applicant respectfully requests withdrawal of the rejections.

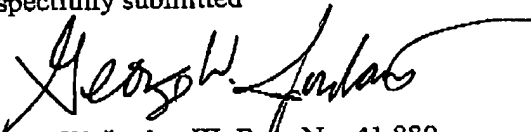
Although the Office Action asserts that Rasanen, U.S. Patent No. 6,192,055 is not relied upon,¹⁹ the Office Action further asserts that with respect to claims 5, 9, 13 and 18 that Rasanen teaches the use of Group 3 connection in connection with the connecting modems.²⁰ The Office Action then asserts that "therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Tonnyby *et al.*, Qureshi *et al.*, and Yoshida *et al.*'s inventions according to the teaching of Rasanen ...".²¹ Claims 5, 9, 13 and 18 depend from allowable claims 1, 7, 11, and 15 and are therefore also allowable. For at least this reason, Applicant respectfully requests withdrawal of the rejections. Applicant further requests clarification of the status of Rasanen.

CONCLUSION

Applicant respectfully submits that all issues and rejections have been adequately addressed, that all claims are allowable, and that the case should be advanced to issuance.

If the Examiner has any questions or wishes to discuss the claims, Applicant encourages the Examiner to call the undersigned at the telephone number indicated below.

Respectfully submitted



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Date: 11/24/03¹⁸ Paper 8, p. 6.¹⁹ Paper 8, pp. 6-7.²⁰ Paper 8, p. 6.²¹ Paper 8, p. 6.

Serial No. 09/345,269
Reply to Office Action of September 22, 2003

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